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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re T.L. et al., Persons Coming Under the  
Juvenile Court Law.

B261331  
(Los Angeles County  
Super. Ct. No. DK07001)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

TONY L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.

Marguerite Downing, Judge. Affirmed.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, Peter Ferrera, Deputy County Counsel, for Plaintiff and Respondent.

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Tony L. (Father) appeals from the dependency court's jurisdictional and dispositional orders. We find that, although the dependency court erred by preventing Jeanine W. (Mother) from testifying at the jurisdictional hearing, the jurisdictional and dispositional orders were proper and appropriate. Accordingly, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On July 18, 2014, Mother walked into a police station in Los Angeles to report an incident of domestic violence. Mother is married to Father. Together they have two sons (at the time, ages 7 and 5), and Mother was also caring for two foster children. Mother stated that a friend had come to visit her that evening, which angered Father. After the friend left, Father yelled at Mother for having the friend over, and proceeded to choke her, yelling, "You're gonna make me fucken kill you." Mother was not able to breathe until Father released his grip.

Mother reported that Father had physically assaulted her more than 20 times, but that she was scared to file a police report. About a week prior to the choking incident, Mother awoke to see Father pointing a gun at her head. On other occasions, Father forced her to have sex, threatening to kill her if she did not.

Police officers went to the family residence and detained Father. They searched the residence and found a fully loaded revolver in the pocket of an adult athletic jacket hanging in the children's bedroom closet. The revolver had previously been reported stolen.

Father stated that he was involved in an argument with Mother but denied there was a physical altercation. He claimed they argued because Mother had a drinking problem. He admitted he stored his clothes in the children's bedroom closet.

Father was placed under arrest for spousal abuse/simple assault. The arresting officers also requested that additional charges be filed for Father being an ex-felon in possession of a firearm, for being in possession of a stolen firearm, for receiving stolen property, for making criminal threats, and for spousal rape.

On July 19, 2014, a Department of Children and Family Services (DCFS) social worker interviewed Father at the police station. He denied claims of emotional abuse,

physical abuse, and severe neglect. Father acknowledged that the previous day he and Mother had argued. He stated that he felt suicidal and he tried to express that to Mother, as he wanted her to console him. For the prior two months, he felt suicidal and had become easily agitated. He believed these issues were caused by his diabetes medication.

Father claimed that he and Mother argued because he expressed concerns about Mother's drinking habit. Father denied choking Mother and said he wanted to harm himself, not her. He denied a history of domestic violence. He also denied that he raped or threatened Mother. He said that Mother would nag him about his health and diabetes, and he would try to talk to her about her drinking. According to Father, Mother drank a bottle of wine about four times a week, while the children were in bed asleep. Father stated, however, that Mother was a great mother and foster mother.

Father claimed that he had found the gun and stored it in the home before the foster children were placed there. When the foster children arrived, he moved the gun to a location outside of the home. He stated that he had brought the gun back into the home only on the day of the incident, as he was contemplating committing suicide. He denied that he threatened Mother with the gun.

A DCFS social worker interviewed Mother on July 20, 2014. She said that on July 18, 2014, Father got upset because Mother had a friend over. After the friend left, Mother was in the kitchen cooking and had the oven door open. Father began yelling at her and tried to grab her, but could not reach her because she was standing on the other side of the oven door.

Mother stated she could not remember Father threatening to kill her. She denied that Father had raped her, and claimed she had said that only to get Father help before he killed himself. She also denied that Father held a gun to her head. She knew that there was a gun in the home before they had foster children, but believed that the gun was then removed from the home. Mother stated she did not know Father brought the gun back into the home.

The social worker also interviewed the couple's sons. Both were polite and well-mannered, and both denied that any domestic violence occurred.

In a later interview, Mother said she had made a mistake by making false allegations against Father. She claimed she did so in an effort to get help for him. Mother said Father had a hard time accepting that he had diabetes and would not check his blood sugar levels. Mother acknowledged drinking two glasses of wine every other night when the children were asleep, and occasionally taking shots of tequila. Mother stated she had stopped drinking and was attending Alcoholics Anonymous meetings.

Father was interviewed in jail in August 2014. He said Mother lied about the domestic violence, the threats, and the rape. Father stated that he retrieved the gun from outside the home on July 18, 2014, after the argument with Mother. He refused to provide details on where he had kept the gun. He also would not say what he planned to do with the gun. Father insisted that the gun was only in the home for a short period of time, when the children were not at home.

In a subsequent assessment meeting, both Father and Mother reported that there was domestic violence in their relationship. Mother stated that sometimes she was the aggressor, while other times Father was. Father stated that he was both emotionally and physically abused by Mother. He acknowledged that during the incident of July 18, 2014, he made a motion as if to hit Mother, and said he was sorry for doing so. Father also said he felt depressed and had suicidal thoughts and anxiety.

On August 21, 2014, DCFS filed a section 300 petition.<sup>1</sup> The b-1 count stated in the petition alleged that the couple's two sons were at risk because Mother and Father had a history of engaging in violent altercations, and that Father choked Mother, had pointed a gun at Mother's head, and had threatened to kill her. It was further alleged that Mother allowed Father to reside in the home and failed to protect the children. The b-2 count alleged that Father placed the children in a detrimental and dangerous situation by keeping a loaded gun in the home where the children could access it. The dependency

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<sup>1</sup> Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

court ordered the children detained from Father. They were released to Mother's custody.

DCFS filed a jurisdiction/disposition report on September 26, 2014. When interviewed in September 2014, Mother said that she and Father did not have a history of domestic violence. She said they would argue about Father's neglectful diabetes management and her drinking. She again denied that Father choked her or threatened to kill her, and said that she reported false information to the police to get help for Father because he was suicidal.

Following his release from jail in September 2014, Father was also interviewed. He acknowledged that the couple argued, but denied that there was any hitting, shoving, or choking. He did lunge at Mother on one occasion, but did not threaten to kill or hurt her. Father stated that he was depressed and told Mother he wanted to kill himself, but he never attempted suicide. Father denied being convicted for spousal abuse, and said he was convicted of "something else." He maintained that he did not keep the gun in the home, and stated that he had stored it "in Compton." He did not know why he brought the gun back to the house. Both Father and Mother wished to continue living together as a family.

The jurisdictional hearing took place on December 9, 2014. Mother waived her trial rights and agreed to submit the matter to the dependency court based on the DCFS reports. Father's attorney called Mother to testify. The court asked Father's counsel why she was calling Mother to testify, to which counsel responded, "To question her regarding the b-1 allegations." The court then stated: "Here's the problem, you're not her attorney. She has entered a plea. I think this is problematic. . . . She's entered a plea, but I have not sustained anything. So if she gets on the stand, I think she is lying, she is not credible or she says something that counters the plea agreement [Mother has] already entered, then she affects the agreement that she has made with the department. I do not know if you all discussed this prior to calling her." Mother's counsel responded that her client did not wish to testify, but that Father had the right to cross-examine Mother. The following exchange then occurred: "The Court: She needs to invoke her amendment

to— [Mother’s Counsel]: She does not—however, she does not have the right to invoke that issue, if she does not have criminal charges pending on this case. The Court: She does not need that. She is subject to this petition. She is a party. So if she does not want to testify, she can’t be called to testify because she’s a party. [Mother’s Counsel]: The court is allowing her then to—pursuant to *Mark A.*, then she will invoke that. The Court: I am.” Father’s counsel objected. The court responded: “I’ll note your objection for the record. But she is charged. She is not charged. She is named [as] a failure to protect, so she is subjecting herself to issues from this court. She is a party. She can’t—she has a right to remain silent. I’m going to allow her to exercise that right.” Father’s counsel reasserted the objection, stating: “I do not believe the circumstances in this case fall within *Mark A.* I would limit my questioning to questions regarding the b-1 count.”

Father then testified. He stated that he and Mother have been in a relationship for 13 years. He denied ever choking Mother or physically assaulting her. He further denied pointing a gun at Mother. He said that he was convicted of possession of a firearm in 2014, not domestic violence. He said he got the gun “by a friend’s house” in Compton, and brought it to the home to tell his wife that he was going to use it to kill himself if they did not get their lives together.

During argument following the testimony, Father’s counsel submitted on the b-2 count, while requesting that the b-1 count be dismissed in its entirety. DCFS argued that the statements made by Mother to the police reflected the actual domestic violence present in the couple’s relationship.

The dependency court found Father not credible and believed he had minimized his involvement in the events underlying the dependency matter. The court sustained both the b-1 and b-2 counts. It denied Father’s request for custody of the children, noting that Father had attended only one domestic violence class.

The children were declared dependents of the court and placed with Mother. Father was to be provided monitored visits. He was ordered to participate in a 52-week domestic violence program, to attend parenting classes, to attend individual counseling for issues including anger management, and to attend conjoint counseling with Mother.

Mother was ordered to attend a domestic violence support group, individual counseling, and conjoint counseling, and to submit to random alcohol tests.

Father timely appealed.

### **DISCUSSION**

On appeal, Father contends that the dependency court erred when it refused to allow Father to call Mother to testify at the jurisdictional hearing. He argues that, had Mother testified, she likely would have stated that Father did not choke her, point a gun at her, or engage in other acts of domestic violence, which could have led the dependency court to strike the b-1 count.

It appears that the court encouraged Mother not to testify based on Mother's Fifth Amendment right not to incriminate herself. The privilege against self-incrimination is rarely applicable in dependency proceedings, which promote the disclosure of all relevant evidence to protect the paramount interests of a child's safety and welfare. (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 440.) In keeping with this principle, section 355.1, subdivision (f) provides: "Testimony by a parent, guardian, or other person who has the care or custody of the minor made the subject of a proceeding under Section 300 shall not be admissible as evidence in any other action or proceeding." The Fifth Amendment privilege can properly be asserted in dependency proceedings under a limited set of circumstances, however, because section 355.1, subdivision (f) does not provide as broad a scope of immunity as the Fifth Amendment. (*In re Mark A.* (2007) 156 Cal.App.4th 1124, 1128-1129.) While testimony covered under section 355.1, subdivision (f) may not be used directly as evidence in a criminal action, the statute does not expressly foreclose the possibility that such testimony may be used in a "derivative" manner to discover evidence relevant to a criminal matter. (*Mark A.*, at pp. 1133-1134.)

In this matter, there was no valid basis for the dependency court to urge Mother to assert her Fifth Amendment rights. Dependency matters are civil in nature. (*In re B.F.* (2010) 190 Cal.App.4th 811, 816.) No criminal charges were pending against Mother, and there was no indication that Mother was likely to face criminal prosecution. The court appeared to believe that Mother might testify in a manner contradicting her

previous statements to police or DCFS social workers, and that this testimony could result in a dispositional order less satisfactory to Mother than what the court would otherwise order. But this was not a sufficient basis to find that the privilege against self-incrimination applied—it was completely irrelevant to the analysis of whether the testimony could be used, or lead to evidence that could be used, in a criminal prosecution.

Nevertheless, although the dependency court erred in its application of the Fifth Amendment privilege, reversal is not warranted. The petition alleged that multiple grounds existed for jurisdiction. In such a case, “a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. . . . [T]he reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) At the jurisdictional hearing, Father’s counsel submitted on the b-2 allegations, and asserted that Mother’s testimony would only be relevant to the b-1 allegations. On appeal, Father again acknowledges that the requested testimony only related to the b-1 allegations, and he makes no argument regarding the validity of the sustained b-2 allegations. The sustained b-2 allegations alone justified the dependency court’s finding of jurisdiction.

Further, even if the dependency court had allowed testimony by Mother, and the testimony caused the court to strike the b-1 allegations, we find no basis to conclude that the court would have issued different dispositional orders. Given that Father acknowledged pervasive suicidal thoughts, and kept a fully loaded gun in the pocket of a jacket hanging in the closet of his sons’ bedroom, removal of the children from his care was justified. “The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.” (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

There was also abundant evidence, whether contradicted or not, that Mother and Father had a history of domestic violence. The dependency court was aware that Mother,



after accusing Father of committing violent acts, later recanted the allegations when speaking to DCFS social workers. Testimony by Mother was unlikely to convince the court that Father would not benefit by participating in a domestic violence program, parenting classes, individual counseling, and conjoint counseling. Therefore, there is no compelling basis to reverse the court's jurisdictional and dispositional orders.

**DISPOSITION**

The jurisdictional and dispositional orders are affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.